

# Policy Brief

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## Recent Developments in PSI and Key Issues

### ABSTRACT

U S President Bush announced the Proliferation Security Initiative (PSI) in May 2003 with the goal of preventing the proliferation of weapons of mass destruction (WMD) and related materials, and a series of new developments — most notably an increasing number of participating countries, the adoption of specific interdiction principles, and the conclusion of bilateral ship-boarding agreements for more efficient interdiction — gave a boost to the global initiative during the first year. The PSI is likely to take root as an indispensable element of the global WMD nonproliferation regime despite a number of concerns that accompany it, to include its efficiency as a WMD interdiction strategy, the possible violation of the right of innocent passage through territorial seas, and the exercise of the right to interdict suspicious ships on the high seas.

South Korea's position on the PSI should be consistent with the principle of curbing WMD proliferation. At the same time, Seoul needs to maintain a balanced view by taking into account the ROK-US alliance and the PSI's possible implications for North Korea issues.

# **Recent Developments in PSI and Key Issues**

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## **I. Rise of PSI and Missions**

The first anniversary of the PSI (Proliferation Security Initiative), which US President Bush announced in May 2003 with the aim of preventing the proliferation of nuclear weapons and other types of WMD and related materials, has been greeted with new progress, such as an enlarged membership and the adoption of follow-on interdiction principles. For a correct understanding of this initiative, one must first comprehend the context of its birth as well as its basic missions.

### *New Paradigm for Prevention of WMD Proliferation*

The stated objectives of the PSI are “to search planes and ships carrying suspect cargo and to seize illegal weapons or missile technologies.” As such, they are a reflection of Washington’s firm and positive resolve since the September 11 terrorist attacks to mobilize all possible means and methods to prevent the proliferation of WMD, which can join hands with international terrorist networks. At the fifth PSI meeting in Lisbon,

Portugal, on March 4 and 5, 2004, the United States and other PSI participants agreed to add to the PSI's role of interdicting ships carrying WMD and related materials the prevention of so-called facilitators of WMD proliferation, including individual traders, companies, and organizations, from engaging in this kind of weapons trade.

The "interdiction"<sup>1)</sup> of suspect ships, a core action principle of the PSI, is articulated under "Counterproliferation," the foremost of the three pillars outlined in the "National Strategy to Combat Weapons of Mass Destruction," which the White House released in December 2002. It is assessed to be a more proactive approach in nature compared to the existing nonproliferation endeavors.

The PSI was, in part, a response to the aftermath of a ship interdiction the year preceding the initiative's birth, tailored to mend the flaws in and secure the legitimacy of interdiction operations in general: with the Spanish Navy's cooperation, the United States interdicted on the high seas in early December 2002 the North Korean cargo ship *Sosan*, which was carrying 15 Scud missiles bound for Yemen. The interdiction stopped short of complete success, however, when some countries protested that the act of having stopped and searched the North Korean ship was a violation of international law. The US answer to critics highlighting the problems of ship interdictions in international waters is simple: a UNSC chairman's statement in January 1992 (s/23500) pointed out that the proliferation of WMD is a clear threat to international peace and security and the PSI is consistent with the views expressed in this statement.

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1) One can say the concept of "interdiction" was devised to satisfy the actual needs of a state imposing a blockade in the light of the fact that a blockade against another nation is impossible in peacetime without a UN Security Council (UNSC) resolution.

*Focus of Interdiction: Trade in and Movement of WMD at Sea*

When the PSI was first announced in May 2003, it singled out aircraft and ships carrying suspicious cargoes as targets of interdiction (land transportation was later added to PSI provisions). However, the greater focus of the PSI is placed on the prevention of trade in and transfers of WMD at sea in the light of ships' cargo transport capability, the accessibility of ships during interdiction operations, and the hitherto track record of PSI exercises. In essence, the movement of ships at sea is entitled to wide-ranging freedoms as provided by the freedom of navigation, and each nation should cooperate to remove all elements of threat that undermine them. Yet, the PSI, whose *raison d'être* stemmed from "the recognition that ships can threaten international peace and security depending on what they carry," diverges this principle and aims to interdict WMD and related materials. Drug trafficking and illegal immigration using ships, for instance, are subject to international controls because in this case, the freight aboard the ships (drugs and illegal migrants) has a bearing on regional security and stability. The September 11 terrorist attacks have placed the maritime movement of and trade in WMD under closer scrutiny, as these weapons can be mobilized for terrorism.<sup>2)</sup>

*Activity-Centered Initiative Based on Voluntary Participation*

The PSI is not an organization but a "coalition of the willing" comprising nations that support the prevention of WMD and related

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2) A measure taken in the aftermath of the September 11 terrorist attacks, Washington, since the latter half of 2002, has implemented the "Container Security Initiative" (CSI), which allows it to screen all containers arriving in US ports and identify those that carry hazardous materials such as explosives used for terrorism.

materials proliferation. While the PSI prescribes a number of steps to be taken, such as relevant information sharing between participating countries, the key concept of the initiative amounts to the “activity” of interdicting ships suspected of carrying questionable goods when necessary. PSI participants agreed to a Statement of Interdiction Principles at the third PSI meeting in Paris in September 2003, and the main idea can be outlined as follows: 1) undertake effective measures, either alone or in concert with other states, for interdicting the transfer or transport of WMD and related materials to and from states or non-state actors of proliferation concern; 2) adopt streamlined procedures for rapid exchange of relevant information, protecting the confidential character of classified information, and dedicate appropriate resources and efforts to interdiction operations and capabilities; 3) review and work to strengthen participating states’ relevant national legal authorities where necessary, and work to strengthen relevant international law and frameworks when necessary; and 4) take specific actions in support of interdiction efforts, to the extent participating states’ national legal authorities permit and consistent with their obligations under international law and frameworks.

## **II. Recent Progress**

The PSI has broken new ground in several operational areas since its launch, and the following developments merit particular attention:

### *Growing Participation*

This US-led effort began with the participation of 11 core members,

including Great Britain and France,<sup>3)</sup> but Canada, Singapore, and Norway joined in the outset of 2004. Russia voiced its decision to participate on May 31, 2004, the first anniversary of the PSI. Official participants to the PSI, therefore, increased to 15 as of July 2004. At a PSI experts-level meeting held in Washington, DC on December 16 and 17, 2003, the 11 core members and the three new participating countries enjoyed the company of Denmark and Turkey, and it appears that the latter two will officially join in the near future.

The PSI boasts the backing of over 60 nations—15 official members plus countries that simply endorse and support the PSI's objectives and principles—and the United States is likely to coax membership out of those transshipment and flag states and notable coastal countries that can make significant contributions to the PSI's interdiction activities.

#### *Adoption of Interdiction Principles and Training Exercises*

Inasmuch as the fundamental objective of the PSI is the prevention of trade in and transfers of WMD and related materials at sea, in the air, and on land, PSI member states have adopted a set of interdiction principles and conducted training, with a focus on maritime exercises, to efficiently translate their shared end into action.

As has been noted already, PSI allies adopted a four-point Statement of Interdiction Principles at the third PSI meeting in September 2003, and the statement stipulates specific actions that PSI partners shall take to prevent trade in and transfers of WMD and related materials, to include the following: 1) not to transport or assist in the transport of any WMD-related cargoes to or from states or non-state actors of

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3) The PSI's 11 original member states include the United States, Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, and Great Britain.

proliferation concern; 2) to take action to board and search in their internal waters or territorial seas or areas beyond the territorial seas of any other state any vessel flying their flag and is reasonably suspected of transporting WMD-related cargoes, and to seize such cargoes; 3) to seriously consider providing consent to the boarding and searching of one's own flag vessels reasonably suspected of carrying WMD-related cargoes and to the seizure of such cargoes by other states; 4) to take appropriate actions to stop and/or search in their internal waters, territorial seas, or contiguous zones vessels that are reasonably suspected of carrying WMD-related cargoes, to seize such cargoes, and to enforce conditions on dubious vessels entering or leaving their ports; and 5) to inspect vessels, aircraft, or other modes of transport reasonably suspected of carrying WMD-related materials if their ports and other facilities are used as transshipment points for the shipment of such cargoes to or from states or non-state actors of proliferation concern, and to seize such cargoes.

Since the second half of 2003, PSI members have mobilized the military, police, and customs personnel to a series of training exercises with an eye toward efficiently carrying out specific actions grounded in the interdiction principles and strengthening their actual interdiction operations capability. Six training exercises were carried out in the first half of 2004 alone, to include a US-led landing exercise in the Arabian Sea in January, a German-led customs-procedures exercise at the end of March, and a ground interdiction exercise headed by the Poles in April. PSI participants have held several plenary and operational experts meetings since June 2003 to discuss follow-up details requisite for the efficient implementation of the PSI. Most recently, the sixth plenary meeting was held in Krakow, Poland, from May 31 to June 1, 2004 in

commemoration of the first anniversary of the initiative.

*Conclusion of Bilateral Ship-Boarding Agreements for Efficient Interdiction*

The powerhouse of the PSI, the United States concluded a bilateral ship-boarding agreement with Liberia, which has the world's second largest flag registry (approximately 1,500 ships), on February 11, 2004. Another stride forward in an effort to efficiently interdict ships suspected of carrying WMD, this agreement authorizes the boarding and search of suspect ships in international waters on a bilateral basis. The key points of the agreement are that 1) Liberia, the flag state, sanctions American officials' boarding and search of vessels suspected of carrying WMD on a case-by-case basis but that 2) if there is no response from Liberia within two hours of its acknowledgement of the receipt of a request to board a suspect vessel, the requesting party will be deemed to have been authorized to board it. This bilateral agreement opened a new chapter in PSI history, considering the importance of flag states' authorization in the interdiction of suspicious vessels in international waters.

Washington signed a reciprocal ship-boarding agreement with Panama, the world's largest flag registry (approximately 5,000 ships), on May 12, 2004, and a similar agreement with the Republic of the Marshall Islands on August 13, 2004. The United States is seeking to conclude similar agreements with approximately nine other countries with large stockpiles of registered ships, which lends credence to the claim that bilateral ship-boarding agreements in support of the PSI will further increase between the United States and major commercial flag states or states owning sizeable numbers of commercial vessels.



### **III. Key Points of Contention**

The details of the PSI regime are still in the works 16 months into the PSI's existence, but the fledgling global initiative is already a target of questions debating the strategic effectiveness and international legality of its actual execution.

#### *Effectiveness as WMD Interdiction Strategy*

Specific interdiction principles have been added to the PSI under the goal of interdicting WMD and related materials to and from states or non-state actors of proliferation concern, but the question of just how effective these interdiction principles and subsequent activities will prove to be as a global strategy for the prevention of WMD proliferation leaves many academics and experts polarized. Some academics give high marks to the utility and relevance of the PSI, arguing that the world's responses to WMD proliferation must be flexible and variegated because these weapons are proliferating on a worldwide scale through unpredictably diverse means and methods. Other academics, meanwhile, assert that the PSI scores relatively low in effectiveness and that it is riddled with loopholes, noting that WMD are multiplying in extremely secretive yet elaborate ways. Experts with less-than-lukewarm views on the PSI's efficacy even emphasize that the PSI—perceived by some countries as a tool for imposing maritime blockades—can trigger needless political and military tensions.

Some experts point out that the PSI's success hinges on the cooperation and participation of major powers around the world, particularly China's, for the PSI's efficiency and effectiveness can be redoubled only with a more robust membership. In October 2003, for instance, the German

government ordered one of its commercial ships in the Mediterranean Sea to sail back to Italy: the ship, which was bound for Libya, was found to have been carrying gas centrifuges, which are used for uranium enrichment. If the ship's flag state had not been an official PSI participant, or if the ship had not sailed through the territorial waters of a PSI member or a cooperating country, an effective measure such as the one just cited would have been inconceivable. The latest example hence illustrates that a larger pool of participating and cooperating countries can have a substantial impact on the PSI and its efficacy. Of the key powers whose participation and cooperation are keenly sought after, China is particularly known for harboring slight reservations about the practicality as well as the legality of the PSI. In a Foreign Ministry statement on February 12, 2004, for example, Beijing remarked, "Assuming that the PSI shall be handled through political and diplomatic means within the framework of international law, all measures to prevent WMD proliferation, including the PSI, should contribute to regional and global peace and stability." Russia, which had remained passive, declared at the end of May 2004 a readiness to partake in this global enterprise.

*Possible Violation of "Right of Innocent Passage" Through Territorial Seas*

The interdiction of suspicious ships brings to the fore the first point of controversy between the PSI and international law, specifically with regards to international maritime law: the possible violation of the so-called "right of innocent passage," which all foreign vessels are entitled to in the territorial waters of coastal states. Articles 17 and 19 of the UN Convention on the Law of the Sea (UNCLOS) define the "right of innocent passage" as ships of all states enjoying the right of free passage through the territorial sea so long as it is not prejudicial to the peace,

good order, and security of the coastal state. Opponents of the PSI claim that a coastal state's stoppage and search of a foreign vessel suspected of carrying dubious goods and, to top it all, its seizure of the cargo amount to an infringement of the right of innocent passage.

Article 23 of the UNCLOS, moreover, stipulates that even foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances shall enjoy the right of innocent passage through territorial seas as long as they carry documents and observe special precautionary measures established for such ships by international agreements. The fact of the matter is, however, the fine line between innocent and malevolent passage of foreign vessels through a coastal state's territorial sea is drawn not so much by what "type of cargoes a ship carries" but rather by what "type of activities a ship engages in"—another piece of evidence used to bolster the argument that a coastal state's interdiction of foreign vessels carrying suspicious materials could be a violation of the UNCLOS.

#### *Exercise of Right to "Interdict" Suspect Ships in International Waters*

The vagueness of some parts of the PSI "interdiction" principles (for instance Clause d(2) under Article 4) has opened the door to the generally accepted understanding that their application can be extended to vessels loaded with questionable cargoes in international waters. This interpretation holds the potential for friction with international law, for, according to Article 92 of the UNCLOS, ships shall be subject to their respective flag states' exclusive jurisdiction on the high seas. Article 110 of the UNCLOS, on the other hand, spells out exceptional jurisdiction over ships on the high seas. Strictly limited to cases of verifying ships' right to fly their flag when they are suspected of being engaged in piracy,

slave trade, or unauthorized broadcasting or are thought to be without nationality or flying a foreign flag, the article grants the right of visit to non-flag states' warships or ships on government non-commercial service. Viewed from this angle, third-state interdiction of foreign ships on the high seas, sans the flag states' authorization but merely based on suspicions that they are carrying WMD-related materials, could be a violation of international law.

For the dual purpose of interdicting ships carrying suspect goods on the high seas while skirting international legal issues, Washington is seeking the conclusion of bilateral ship-boarding treaties with the world's major registrants of flagged commercial vessels, the pact it forged with Liberia being a case in point. The United States is also pushing to revise with other PSI participating states the "Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation," also known as the SUA, to make illegal the very act of ship transports of WMD and related materials.

*Discriminatory Selection of "Interdiction" Targets and Compensation for Unfounded Suspicions*

While the main thrust of the PSI is to prevent transfers of and trade in WMD and related materials, it limits objects of interdiction to materials that flow from or head for "states or non-state actors of proliferation concern." Such a narrow definition of target betrays a critical flaw in the PSI: WMD and related materials may not be interdicted when they are transported into or out of those states or non-state actors of non-proliferation concern. In the same vein, some countries criticize that the PSI unjustly targets a select group of nations, or better known as "rogue states."

Another issue of potential conflict is the economic compensation and accountability for delayed cargo shipments ensuing erroneous interdictions. After all, ships can be interdicted after mistakenly suspected of having ties to or carrying WMD or like materials, only for search findings to prove that the vessel and the freight are innocuous.

#### **IV. Prospects and Policy Considerations**

##### *Prospects*

##### **1. Push for Institutionalization and Renewed Emphasis on International Cooperation**

While the PSI does not take the shape of a formal international treaty like the Missile Technology Control Regime (MTCR) but is rather a crystallization of participating countries' voluntary pledge, the heart of its goal remains the interdiction of WMD and related materials. The United States, spearheading the PSI and well aware of its nature as well as end goal, is likely to step up efforts for the institutionalization of this global initiative so that it may take root as an indispensable element of the global WMD nonproliferation regime. In a speech to the National Defense University on February 11, 2004, US President Bush put forward the expansion of the PSI's work as one of the seven proposals to stem WMD proliferation and accentuated international cooperation in not only information sharing and interdiction operations but in law enforcement to hunt down and dismantle proliferation networks. Washington is currently working for the adoption of a UNSC resolution that places a greater emphasis on international cooperation in the prohibition of illicit trade in WMD and related materials.

## **2. Sustained Efforts Toward Increased Participation**

Greater participation is a prerequisite for enhanced strategic effectiveness of the PSI as well as the efficient execution of interdiction operations; as such, US efforts to win more countries' support for the PSI are projected to continue. Russia declared its decision to join this global endeavor at the end of May 2004, leaving Beijing the main target of Washington's exertions to expand the consortium of PSI member countries. Another vital feature of Washington's PSI diplomacy is outreach to potential cooperators, the crux of which is the conclusion of bilateral agreements with mainly key flag and coastal states to obtain boarding rights to ships suspected of carrying WMD and related materials. An increase in PSI participants and supporters is deemed crucial, considering that interdiction operations are bound to face severe setbacks if the flag state of a ship suspected of carrying WMD is not a PSI participant or a cooperating country or if a shady ship sails outside the territorial waters of a participating or a cooperating nation. Nevertheless, the United States, the actual conductor of the PSI, is likely to keep the membership to an adequate size in order to preserve the efficiency and promptness of the PSI decision-making system.

### *Policy Considerations*

#### **1. Position Predicated on Principle of WMD Proliferation Prevention**

The list of PSI participating countries is gradually growing; what is more, the initiative is undergoing institutionalization, a major step toward development into an established component of the global WMD nonproliferation system. This trend dictates the need for the ROK government to maintain a position that is consistent with its hitherto stated principles on WMD proliferation prevention. Another issue begging

Seoul's serious thought is the deprivation and side effects possibly resulting from non-participation in the PSI: the PSI underscores international cooperation in all stages of interdiction, to include comprehensive exchanges of WMD-related information as well as inter-state teamwork in law enforcement and the physical interdiction of ships believed to be carrying WMD and related materials.

## **2. ROK-US Alliance and Implications for North Korea as Matters of Equal Concern**

PSI interdiction operations implicitly seek out ships sailing under the flags of "rogue states" such as North Korea, and as such the targeted countries are vehemently opposed to this global counterproliferation initiative. Seoul has deferred stating an official position on the PSI out of a concern that a backlash from Pyongyang can be ill-boding for inter-Korean relations and the resolution of the nuclear issue. However, given that the PSI's ultimate goal is the prevention of WMD proliferation and is being led by the United States, an ally, the South Korean government needs to maintain a balanced view that takes into consideration the ROK-US alliance as well as the impact the PSI may have on North Korea issues.

## **3. Watching for Trends in International WMD Counterproliferation Efforts**

The PSI is but one of a number of plans and programs in the planning process or already under way to curb further proliferation of WMD. UNSC Resolution 1540, adopted in a unanimous vote on April 28, 2004, has lent impetus to the international community's endeavors to establish and enforce appropriate criminal or civil penalties in all countries for

illicit trafficking in WMD and related materials. There are attempts to strengthen the Nuclear Nonproliferation Treaty (NPT) regime, which would address the call for multilateralizing and limiting enrichment and reprocessing capabilities. The Group of Eight nations have initiated and are heading the “Global Partnership Program” (GPP) with the aim of dismantling existing WMD. A party immediately concerned with the North Korean nuclear predicament, South Korea must closely follow these international trends and chart tangible courses of action to contribute to the prevention of WMD proliferation. Rolling back weapons proliferation will have a direct impact on international peace and security as well as on the peace of the Korean peninsula, and it is for this reason that Korea should direct full attention to international discussion channels for counterproliferation issues.



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